

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
STATESVILLE DIVISION
CIVIL ACTION NO. 5:21-CV-00047-DSC**

NICOLE WASHINGTON,

Plaintiff,

v.

**COMMISSIONER OF SOCIAL
SECURITY ,**

Defendant.

MEMORANDUM AND ORDER

THIS MATTER is before the Court on Plaintiff’s “Motion for Judgment on the Pleadings” (document #12) and Defendant’s “Motion for Summary Judgment” (document #14), as well as the parties’ briefs and exhibits.

The parties have consented to Magistrate Judge jurisdiction pursuant to 28 U.S.C. § 636(c) and these Motions are ripe for disposition.

The Court finds that Defendant’s decision to deny Plaintiff Social Security benefits is supported by substantial evidence. Accordingly, the Court will deny Plaintiff’s Motion for Judgment on the Pleadings; grant Defendant’s Motion for Summary Judgment; and affirm the Commissioner’s decision.

I. PROCEDURAL HISTORY

The Court adopts the procedural history as stated in the parties’ briefs.

Plaintiff filed the present action on March 22, 2021. She assigns error to the Administrative Law Judge's formulation of her Residual Functional Capacity,¹ but only in the most general terms. "Plaintiff's Memorandum ..." at 1-6 (document #21-1).

II. DISCUSSION

The Social Security Act, 42 U.S.C. § 405(g) and § 1383(c)(3), limits this Court's review of a final decision of the Commissioner to: (1) whether substantial evidence supports the Commissioner's decision, Richardson v. Perales, 402 U.S. 389, 390, 401 (1971); and (2) whether the Commissioner applied the correct legal standards. Hays v. Sullivan, 907 F.2d 1453, 1456 (4th Cir. 1990); see also Hunter v. Sullivan, 993 F.2d 31, 34 (4th Cir. 1992) (per curiam). The District Court does not review a final decision of the Commissioner de novo. Smith v. Schweiker, 795 F.2d 343, 345 (4th Cir. 1986); King v. Califano, 599 F.2d 597, 599 (4th Cir. 1979); Blalock v. Richardson, 483 F.2d 773, 775 (4th Cir. 1972).

As the Social Security Act provides, "[t]he findings of the [Commissioner] as to any fact, if supported by substantial evidence, shall be conclusive." 42 U.S.C. § 405(g). In Smith v. Heckler, 782 F.2d 1176, 1179 (4th Cir. 1986), quoting Richardson v. Perales, 402 U.S. 389, 401 (1971), the Fourth Circuit defined "substantial evidence" thus:

Substantial evidence has been defined as being "more than a scintilla and do[ing] more than creat[ing] a suspicion of the existence of a fact to be established. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."

¹The Social Security Regulations define "Residual Functional Capacity" as "what [a claimant] can still do despite his limitations." 20 C.F.R. § 404.1545(a). The Commissioner is required to "first assess the nature and extent of [the claimant's] physical limitations and then determine [the claimant's] Residual Functional Capacity for work activity on a regular and continuing basis." 20 C.F.R. § 404.1545(b).

See also Seacrist v. Weinberger, 538 F.2d 1054, 1056-57 (4th Cir. 1976) (“We note that it is the responsibility of the [Commissioner] and not the courts to reconcile inconsistencies in the medical evidence”).

The Fourth Circuit has long emphasized that it is not for a reviewing court to weigh the evidence again, nor to substitute its judgment for that of the Commissioner, assuming the Commissioner’s final decision is supported by substantial evidence. Hays v. Sullivan, 907 F.2d at 1456 (4th Cir. 1990); see also Smith v. Schweiker, 795 F.2d at 345; and Blalock v. Richardson, 483 F.2d at 775. Indeed, this is true even if the reviewing court disagrees with the outcome – so long as there is “substantial evidence” in the record to support the final decision below. Lester v. Schweiker, 683 F.2d 838, 841 (4th Cir. 1982).

The question before the ALJ was whether Plaintiff became disabled at any time.² Plaintiff challenges the ALJ’s determination of her RFC. The ALJ is solely responsible for assessing a claimant’s RFC. 20 C.F.R. §§ 404.1546(c) & 416.946(c). In making that assessment, the ALJ must consider the functional limitations resulting from the claimant’s medically determinable impairments. SSR96-8p, available at 1996 WL 374184, at *2. The ALJ must also “include a narrative discussion describing how the evidence supports each conclusion, citing specific medical facts . . . and non-medical evidence.” Id.

Plaintiff has the burden of establishing her RFC by showing how her impairments affect her functioning. See 20 C.F.R. §§404.1512(c) & 416.912(c); see also, e.g., Stormo v. Barnhart, 377 F.3d 801, 806 (8th Cir. 2004) (“[t]he burden of persuasion . . . to demonstrate RFC remains

²Under the Social Security Act, 42 U.S.C. § 301, et seq., the term “disability” is defined as an:

inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months...
Pass v. Chater, 65 F. 3d 1200, 1203 (4th Cir. 1995).

on the claimant, even when the burden of production shifts to the Commissioner at step five”); Plummer v. Astrue, No. 5:11-cv-06-RLV-DSC, 2011 WL 7938431, at *5 (W.D.N.C. Sept. 26, 2011) (Memorandum and Recommendation) (“[t]he claimant bears the burden of providing evidence establishing the degree to which her impairments limit her RFC”) (citing Stormo, adopted, 2012 WL 1858844 (May 22, 2102), aff’d, 487 F. App’x 795 (4th Cir. Nov. 6, 2012).

In Mascio v. Colvin, 780 F.3d 632 (4th Cir. 2015), the Fourth Circuit held that “remand may be appropriate . . . where an ALJ fails to assess a claimant's capacity to perform relevant functions, despite contradictory evidence in the record, or where other inadequacies in the ALJ's analysis frustrate meaningful review.” 780 F.3d at 636 (quoting Cichocki v. Astrue, 729 F.3d 172, 177 (2d Cir. 2013)). This explicit function-by-function analysis is not necessary when functions are irrelevant or uncontested. An ALJ may satisfy the “function-by-function” requirement by referencing a properly conducted analysis by State agency medical consultants. See Settlemyre v. Colvin, No. 5:14-CV-00199-MOC, 2015 WL 5457950, at *4 (W.D.N.C. Sept. 16, 2015); Linares v. Colvin, No. 5:14-CV-00120, 2015 WL 4389533, at *3 (W.D.N.C. July 17, 2015) (“Because the ALJ based his RFC finding, in part, on the function-by-function analysis of the State agency consultant, the ALJ’s function-by-function analysis complied with SSR 96-8p.) (citing Lemken v. Astrue, No. 5:07-CV-33-RLV-DCK, 2010 WL 5057130, at *8 (W.D.N.C. July 26, 2010); Onishea v. Barnhart, 2004 WL 1588294, at *1 (5th Cir. July 16, 2004)). The ALJ’s RFC determination here is supported by substantial evidence including Plaintiff’s testimony, medical records and treatment history.

The ALJ found that Plaintiff had the RFC to perform a limited range of sedentary work limited to:

frequently climb ramps and stairs, never climb ladders, ropes, and scaffolds, frequently balance, stoop, kneel, and crouch, and never crawl. The claimant could

frequently push and/or pull to operate foot controls with the bilateral lower extremities. The claimant would require the ability to alternate between sitting and standing hourly while remaining on task. The claimant should have no concentrated exposure to hazards.

(Tr. 17.) The ALJ included those limitations in the hypothetical posed to the Vocational Expert.
(Tr. 49-50).

Plaintiff's only contention is that the RFC "was not supported by substantial evidence." Document #12-1 at 4. She makes no specific assignments of error and does not cite to any evidence in the record to support her contention. See Haperin v. Saul, No. 19-2383, 2021 WL 1259502, at *5 n. 8 (4th Cir. Apr. 6, 2021) (A party "waives an argument by... failing to develop its argument—even if its brief takes a passing shot at the issue"); Duckworth v. Berryhill, 2017 WL 1528757, at *5 (W.D.N.C. April 26, 2017) ("[i]t is well-established that 'issues adverted to in a perfunctory manner, unaccompanied by some effort at developed argumentation, are deemed waived'").

The Court has carefully reviewed the record, the authorities and the parties' arguments. The ALJ applied the correct legal standards. His conclusions that Plaintiff was not disabled is supported by substantial evidence.

III. ORDER

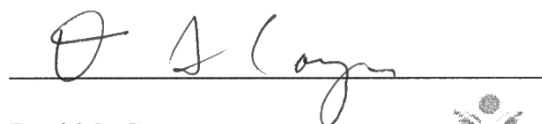
NOW THEREFORE IT IS ORDERED:

1. Plaintiff's "Motion for Judgment on the Pleadings" (document #12) is **DENIED**; Defendant's "Motion for Summary Judgment" (document #14) is **GRANTED**; and the Commissioner's decision is **AFFIRMED**.

2. The Clerk is directed to send copies of this Memorandum and Order to counsel for the parties.

Signed: November 16, 2021

SO ORDERED.



David S. Cayer
United States Magistrate Judge

